

# Detailed Summary of the Labour Mobility Chapter

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## The Agreement on Internal Trade

The Agreement on Internal Trade was signed by First Ministers on July 18, 1994.

The Agreement is based on the operating principle that Canadian governments should ensure the free movement of persons, goods, services and investments across the country.

The Parties to the Agreement are the federal government, all ten provincial governments and the two territorial governments.

The main elements of the Agreement are:

- A General Rules Framework
- Dispute Avoidance and Resolution Procedures
- A Commitment to Future Trade Liberalization
- A Standstill on New Barriers
- A Limited Number of General Exceptions
- Ten Detailed Sectoral Chapters

The ten detailed sectoral chapters for which specific obligations have been negotiated are:

- Procurement
- Investment
- Labour Mobility
- Consumer-Related Measures and Standards
- Agriculture and Food Products
- Alcoholic Beverages
- Natural Resources Processing
- Transportation
- Environmental Protection
- Communications

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## The Labour Mobility Chapter

Chapter 7 of the Agreement on Internal Trade focuses on labour mobility. The purpose of the Chapter is to enable any worker qualified for an occupation in one jurisdiction to be granted access to employment opportunities in that occupation in any other jurisdiction.

To achieve this purpose, the Chapter describes how measures that create barriers are to be modified in order to eliminate or reduce the barrier and allow for mobility of workers.

Chapter 7 targets three main areas where there are barriers that prevent or limit the interprovincial movement of workers:

- Residency requirements
- Practices related to occupational licensing, certification and registration
- Differences in occupational standards

The Chapter also states that certain employment and labour-related issues are not covered by the Agreement. Interprovincial differences in social policy measures, including labour standards, minimum wages and social assistance benefits, are not covered.

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## Organizations covered

- Government departments, ministries and similar agencies must comply with the provisions of the Chapter.
- Regional, local, district and other forms of municipal governments are encouraged to comply within a reasonable period. As well, occupational regulatory bodies and non-governmental organizations that exercise authority delegated by law are encouraged to comply within a reasonable period.
- Other non-governmental organizations, such as unions, education and training establishments, and professional associations will be asked to comply.

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## Obligations of the Labour Mobility Chapter

There are three main obligations arising from the Labour Mobility Chapter related to:

1. Residency Requirements
2. Licensing, Certification and Registration of Workers
3. Recognition of Occupational Qualifications and Reconciliation of Occupational Standards

### 1. Residency Requirements

Canadian workers are sometimes required to reside in a province before being eligible to access employment opportunities in that province or to be eligible for occupational licensing. Article 706 of the ITA addresses this barrier and states that:

*"...no Party shall require a worker of any other Party to be resident in its territory as a condition of:*

- a) access to employment opportunities;*
- b) licensing, certification or registration relating to the worker's occupation; or*
- c) eligibility for the worker's occupation."*

Under the Labour Mobility Chapter, Parties will no longer be allowed to maintain residency requirements, except towards meeting certain legitimate objectives, as discussed later.

Residency requirements sometimes have been imposed as a means of ensuring consumer protection. The Chapter recognizes that this is a legitimate objective, but suggests alternative ways of achieving the objective besides the imposition of residency requirements. For example, Parties could require that workers in certain professions post a bond or maintain a form of financial security or insurance.

### 2. Licensing, Certification and Registration of Workers

There are a number of professions and trades for which workers must be licensed, certified or registered in order to practice. Usually, it is a provincial body to whom authority has been delegated to conduct such licensing, certification or registration.

Article 707 addresses practices related to the licensing, certification and registration of workers and calls upon Parties to ensure that their practices:

a) relate principally to competence

This obligation requires Parties to ensure that any measure related to licensing, certification or registration be based principally on the ability to perform the work. For example, where there are differences in the type or length of occupational training among jurisdictions, Parties should base licensing on competencies, rather than just the amount or type of training required. Coupled with other obligations of the Chapter, this could lead to easier recognition of workers' qualifications, often without resorting to additional testing, assessment or training.

b) are published and readily accessible

This calls upon Parties to make information related to licensing procedures widely available to ensure that workers understand how their qualifications will be recognized in other jurisdictions.

c) do not result in unnecessary delays

Parties should attempt to develop mechanisms to ensure that workers do not face unnecessary delays in having their qualifications recognized in another province. For example, if there is to be an assessment of the worker's qualifications or if the worker must write an additional qualifying examination, these measures should be undertaken quickly so as to avoid becoming barriers that affect mobility.

d) do not impose fees or other costs that are burdensome.

Where workers are required to have their qualifications assessed or to write an additional qualifying examination, there are sometimes fees involved for the provision of the service. This obligation requires that, except for cost differentials, the fees cannot be greater than those that the Party imposes on its own workers for similar services.

### **3. Recognition of Occupational Qualifications and Reconciliation of Occupational Standards**

Article 708 is a key obligation of the Labour Mobility Chapter. It calls upon Parties to undertake "to mutually recognize the occupational qualifications required of workers of any other Party". Recognition of occupational qualifications is one of the main ways to achieve labour mobility. However, where jurisdictions do not presently recognize the qualifications of workers from other Parties, it may be due directly to differences in their occupational standards. Therefore, this Article also calls upon Parties to "reconcile differences in occupational standards" in a manner specified in an annex to the Chapter.

The Chapter defines an occupational standard as:

*"...the skills, knowledge and abilities required for an occupation as established by a recognized body and against which the qualifications of an individual in that occupation are assessed."*

Occupational standards are usually the responsibility of regulating bodies within each province or territory. Where different standards exist across jurisdictions for the same occupation, those differences may result in a barrier to labour mobility.

Under the obligations of the Labour Mobility Chapter, Parties agree to undertake an assessment of occupations which they regulate to determine whether there exists a high level of commonality among the standards for that occupation. Where a high level of commonality exists, Parties agree to mutually recognize the qualifications of workers from other jurisdictions without requiring additional testing, assessment or training. If there is insufficient information for Parties to make that determination,

Parties agree to participate in an occupational analysis. The occupational analysis will examine the knowledge, skills, abilities and other requirements of the occupation in each jurisdiction. Based on the results of that occupational analysis, Parties can then determine whether or not there is sufficient commonality to allow for mutual recognition of qualifications.

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## Legitimate Objectives / Exceptions

It is recognized that there are legitimate objectives that Parties may pursue, even though they may be inconsistent with certain obligations of the Agreement. As well, compliance with the obligations of the Labour Mobility Chapter is subject to certain exceptions.

### 1. Legitimate Objectives

Article 709 (1) states that a measure that is inconsistent with any of the obligations of the Chapter is still permissible provided the measure meets four conditions:

- (a) the purpose of the measure is to achieve a legitimate objective;*
- (b) the measure does not operate to impair unduly the access of workers of a Party who meet that legitimate objective;*
- (c) the measure is not more mobility-restrictive than necessary to achieve that legitimate objective;*  
*and*
- (d) the measure does not create a disguised barrier to mobility.*

The definition of "legitimate objective" includes objectives such as public security and safety, public order, consumer protection and labour market development. Article 709 goes on to provide other options that Parties may pursue in achieving a legitimate objective in order to avoid the imposition of a mobility-restricting measure.

### 2. Exceptions

#### A. Emergency Safeguard Measures

Article 710 allows a Party to be temporarily exempted from their obligations if there is a severe economic dislocation, emergency or natural disaster that seriously disrupts a Party's labour market, thus affecting their ability to comply with an obligation of the Chapter.

#### B. Regional Economic Development

A general provision applicable to the overall Agreement and dealing with regional economic development is contained in Chapter 18. In summary, this Article states that most of the specific obligations of the sector chapters do not apply to measures that are part of a general framework of regional economic development, subject to certain disciplines.

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## Consultations / Dispute Resolution Procedures

One of the features of the Agreement as a whole, and the Labour Mobility Chapter, is the process it establishes for consultations (i.e. receiving complaints) and for resolving disputes.

Article 711 describes the details of the consultation process for labour mobility disputes. It states that, when a complaint or dispute arises, Parties should resolve it within 90 days of the complaint being lodged. If the matter has not been resolved to the complainant's satisfaction, recourse may be had to the overall dispute resolution procedure for the entire Agreement.

Workers, employers, public bodies, sectoral associations and trade unions are among those who have

access to the consultation process. Parties are to designate an official contact person for receiving complaints that may arise between the Parties regarding the interpretation or application of this Chapter.